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14 **UNITED STATES BANKRUPTCY COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

17 In re:

18 HOWREY LLP,

19 Debtor.

Case No: 11-31376 DM

Chapter 11

Hon. Dennis Montali

20 **TRUSTEE'S LIMITED OPPOSITION TO**
21 **REQUEST FOR STATUS CONFERENCE**
22 **PURSUANT TO 11 U.S.C. § 105(D)(1) AND**
23 **MEDIATION OF CERTAIN DISPUTES**

24 Date: June 27, 2013

Time: 2:00 p.m.

25 Crtm: U.S. Bankruptcy Court
26 235 Pine St., 22nd Floor
San Francisco, CA 94104

1 Allan B. Diamond, the chapter 11 trustee ("Trustee") of Howrey LLP ("Howrey") hereby
2 files this Limited Opposition (the "Limited Opposition") to the motion filed by four former
3 partners of Howrey who previously practiced at Day Casebeer Madrid & Batchelder LLP (the
4 "Applicants") seeking a Status Conference Pursuant to 11 U.S.C. § 105(d)(1) and Mediation of
5 Certain Disputes (the "Status Conference Request"). The Limited Opposition has two points.

6
7 First, the Trustee does not object to this Court holding a status conference on the single
8 issue identified by the Applicants.¹ The Trustee does object, however, to this Court entering any
9 additional relief, as there is no legal application currently pending. Specifically, the Trustee
10 takes issue with three requests for relief from the Status Conference Request:

- 11 • **Mediation is Unnecessary.** The Trustee's counsel and accountants have already
12 discussed these issues extensively with Applicants and their counsel, and remain open to
13 further discussions. If Applicants wish to transform informal discussions with the
14 Trustee into a formal mediation, they should bear the cost (including, without limitation,
the mediator's fees) of any mediation.
- 15 • **Attendance of Other Partners at Any Mediation.** The Status Conference Request asks
16 this Court to "direct the Trustee and his account to meet and mediate with the Applicants
17 and their tax accountants (and *other partners desiring to participate*)..." See Dkt. 1217
18 at 3:7-8 (emphasis supplied). The Trustee objects to the participation of any former
19 Howrey partners other than the Applicants in any court-ordered mediation. The
20 Applicants have raised an issue unique to them; there is no cause for permitting other
former Howrey partners to compel mediation. A "global tax mediation" open to the
hundreds of former Howrey partners is unworkable, inefficient, costly, and time-
consuming – and all without any benefit to the estate.
- 21 • **Directive to Fulfill Fiduciary Duties.** The Status Conference Requests asks this Court
22 to direct the Trustee to "fulfill his fiduciary duty to the Applicants." See Dkt. 1217 at
23 14:2-4. The Trustee objects to any such directive: the Trustee disputes both that he owes
24 any fiduciary duty to the Applicants and that he has failed to comply with any alleged
25 fiduciary duty. The Trustee has complied fully with his fiduciary duties – he and his
professionals (including Howrey's accountants) have spoken with the Applicants or their
counsel, have reviewed the relevant documents, and prepared Howrey's tax returns
accordingly. But even if any legal or factual basis supported a fiduciary duty claim, this

26 ¹ Trustee's counsel does request, however, permission to appear telephonically, if possible, in order to
accommodate travel for certain settlement meetings regarding Howrey's pending or anticipated litigation.

1 Court should not make any such findings in response to a routine status conference
2 request.

3 Second, by virtue of filing this Limited Opposition, the Trustee does not concede that
4 there is any validity to the factual or legal positions advanced in the Status Conference Request.
5 With due respect to the Applicants and their counsel, the reading of the Business Combination
6 Agreement (“BCA”) advanced in the Status Conference Request is incorrect. Despite the
7 Applicants’ claims otherwise, the BCA did not render them “fixed” income partners who are
8 “contractually protected from ongoing tax liability” for the anticipated cancellation of debt
9 income Howrey may receive in 2013. *See* Dkt. 1217 at 1:6-8. Because the Applicants have
10 sealed the contents of the BCA,² the Trustee will not belabor the point here, except to say that the
11 BCA cannot be read to differentiate the Applicants from Howrey’s other Level II partners who
12 would be allocated cancellation of debt income.³

14 Subject to these objections, the Trustee is prepared to participate in a June 27th status
15 conference on the Applicants’ Status Conference Request.
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23 ² The BCA is attached, unsealed and in its entirety, to one of the Applicant’s proof of claim. Nevertheless,
24 Applicants obtained an order sealing the BCA in connection with the Status Conference Request.

25 ³ In short order, Paragraphs 3.2 and 3.3 of the BCA do not “fix” the Applicants’ compensation. Instead, both
26 set a base compensation from which discretionary increases are not only available, but specifically contemplated.
Moreover, the BCA provides that the Applicants would become Level II equity partners at Howrey, subject to all
rights and obligations under the Partnership Agreement, including sharing in the firm’s profits and losses.

1 Dated: June 13, 2013

2 Respectfully submitted,

3 /s/ Andrew B. Ryan

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_____ (COURIER SERVICE) By providing true and correct copies of the above referenced documents [with copies of the supporting detailed invoices/attorney time records for the Final Fee Application] via courier delivery, to the following on or about _____:

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